IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 186 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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PATEL FATABHAI HEMRAJBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 186 of 2000

MR KS JHAVERI for Petitioner No. 1

Mr. Sen AGP for Respondent No. 1-3

NOTICE SERVED BY DS for Respondent No. 1

MR MH RATHOD for Respondent No. 4

RULE SERVED BY DS for Respondent No. 5

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 04/09/2001

ORAL JUDGEMENT

Heard learned advocate Mr. Parth Y. Divyeshwar for Mr. K.S. Jhaveri, learned advocate appearing for the petitioner; Mr. Sen, learned AGP for respondents No.1 to 3 and Mr. Mehul H. Rathod, learned advocate for respondent No. 4. Respondent No.5 has been served with the notice of Rule. However, no appearance has been filed on behalf of respondent No.5.

This petition was admitted by issuing rule thereon on 28.3.2001 and it was made returnable on 20.4.2001.

In this petition, the petitioner has challenged the order passed by the Deputy Secretary, Revenue Department dated 2nd August, 1999 wherein the Deputy Secretary has set aside two orders dated 6th May, 1993 passed by the Taluka Development Officer as well as the order dated 1st July, 1995 passed by the District Collector, Palanpur in favour of the petitioner. Learned advocate appearing for the petitioner has submitted that the respondent No.4 has approached the Deputy Secretary challenging the order passed by the Collector dated 1st July, 1995. He has also submitted that there was no challenge in so far as the order passed by the Taluka Development Officer on 6.5.1993 was concerned. He has submitted that after the order was passed by the Taluka Development Officer in favour of the petitioner, encroachment has also been regularized by the District Collector on 1st July, 1995 and, therefore, interference by the Deputy Secretary is without jurisdiction.

Learned advocate Mr. Mehul H. Rathod appearing for respondent No.4 has submitted that now there is no dispute between the petitioner and respondent No.4 and, therefore, the order passed by the Deputy Secretary on 2nd August, 1999 is required to be set aside while restoring the order dated 6.5.93 passed by the Taluka Development Collector as well as the order passed by the Collector dated 1st July, 1995.

Learned AGP Mr. Sen appearing for the respondents Nos. 1 to 3 has submitted that the affidavit in reply has been filed by the Mamlatdar, Palanpur wherein it is submitted that the public road has become narrow and, therefore, order of the deputy Secretary is legal and valid.

I have considered the submissions made by the learned advocates for the respective parties. It is pertinent to note that the order passed by the Collector dated 1st July, 1995 was challenged by respondent NO.4

before the Deputy Secretary and in the said proceedings, order passed by the Taluka Development Officer was not at all challenged by respondent NO.4. It is also pertinent to note that the State Government has not challenged the said order by filing any revision or appeal. Now, according to Mr. Mehul H. Rathod, learned advocate appearing for respondent No.4, the disputes between the petitioner and respondent No.4 have been settled and respondent No. 4 is not having any grievance against the petitioner and, therefore, he has given consent for setting aside the order passed by the Deputy Secretary dated 2nd August, 1999. Therefore, according to my view, considering the fact that the order passed by the Collector on 1st July, 1995 was challenged by respondent No.4 before the Deputy Secretary and also considering the fact that the State Government has not approached the higher forum against the order passed by the District Collector on 1st July, 1995, since the petitioner and respondent No.4 have settled their disputes, the order passed by the Deputy Secretary dated 2nd August, 1999 should be set aside while restoring the order passed by the Collector on 1st July, 1995 and the order passed by the Taluka Development Officer on 6th May, 1993.

Therefore, considering all these facts and circumstances of the case, and considering the consent given by learned advocate Mr. Mehul H. Rathod for the respondent No. 4, impugned order dated 2nd August, 1999 passed by the Deputy Secretary, Revenue Department is hereby quashed and set aside. Present petition is accordingly allowed. Rule is made absolute accordingly with no order as to costs.

4.9.2001. (H.K. Rathod,J.)

Vyas